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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/821,640 | 03/29/2001 | Guei-Yuan Lueh | 42390P9758 | 5724 |

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EXAMINER

KANG, INSUN

ART UNIT PAPER NUMBER

2193

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/821,640

Applicant(s)

LUEH ET AL.

Examiner

Insun Kang

Art Unit

2193

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Continuation of 11. does NOT place the application in condition for allowance because:

The applicant states that:

Ogasawara discloses calculating an activity degree of a method and using it to decide an activity degree of each method and based on such an activity degree methods are discarded, however Ogasawara does not teach or reasonably suggest determining whether the native code space exceeds a threshold in response to an invocation of a second method and reclaiming the native code. Instead, Ogasawara discloses calculating an activity degree of a method in order to determine when the method should be discarded (page 15).

In response, the instant claim broadly recites determining whether the native code space exceeds a threshold...[and] reclaiming the native code ...in response to the determination. Ogasawara clearly states that if "a memory limit is reached during compilation...the JIT compiler temporarily stops threads in operation col. 6 lines 13-20)" and then an activity degree is determined (col. 6 lines 20-48) "in order to imitate a JITed code discarding policy...to discard JITed codes that are not expected to be used immediately (col. 4 lines 46-53)." Therefore, it is clear that the determination is made whether there is no memory space for the JITed code (if "a memory limit is reached during compilation," col. 6 lines 13-20; if "a memory request of a JIT compiler cannot be met in a certain thread," col. 4 lines 8-10), which indicates that it is determined whether the JITed code space exceeds the available memory limit (threshold). If no memory for the JITed code, the "JIT compiler temporarily stops threads in operation (col. 6 lines 13-20)" in order to "decide an activity degree of a method ...[t]hereafter, based on such an activity degree, some or all of JITed codes of a nonactive method are discarded (col. 4 lines 8-25) so that "the amount of free memory used by them should be available for a long time (col. 4 lines 46-53)." Ogasawara solves the memory limitation problem in JIT compilation by freeing memory based on the activity degree as the solution for the memory limitation problem. Therefore, Ogasawara discloses all the limitations in the claim as shown above, accordingly, the rejection of claim 1 by Ogasawara is considered proper and maintained.

The applicant states that Ogasawara does not disclose the limitations of claims 9 and 17, for the reasons set forth in connection with claim 1. As shown above, the rejection of claim 1 by Ogasawara is maintained, and accordingly, the rejections of claims 9 and 17 are also maintained.

Per claims 2-8, 10-16, and 18-24:


The applicant states that claims 2-8, 10-16, and 18-24 are allowable as being dependent on allowable base claims. As has been shown above, the rejections of the independent claims 1, 9, and 17 by Ogasawara are maintained, the argument that claims 2-8, 10-16, and 18-24 are allowable as being dependent on the allowable base claims is considered moot. Accordingly, the rejections of claims 2-8, 10-16, and 18-24 are proper and maintained.

Per claims 25-28, these claims are cancelled. Therefore, the argument that claims 25-28 are allowable for the reasons set forth in connection with claim 1 is considered moot.

Continuation of 13. Other: 1) Notice of Appeal filed 2/22/2005 has been received.

2) The applicant states in page 14 that no claims have been cancelled in the amendment filed 1/18/2005. However, claims 25-28 have been cancelled in this amendment.

3) The amendment is not in compliance with 37 CFR 1.121. In claims 8 and 16, ',' was deleted in the previous response; In claim 17, ':' is not underlined in line 7; In claim 24, ':' is not underlined in line 5.


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